

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

LUIS GAETA,

Plaintiff,

v.

SHERMAN, *et al.*,

Defendants.

Case No. 1:20-cv-01630-NONE-BAM (PC)

ORDER GRANTING MOTION FOR  
EXTENSION OF TIME TO RESPOND TO  
SCREENING ORDER AND DENYING  
RENEWED MOTION FOR COUNSEL

(ECF No. 12)

**THIRTY (30) DAY DEADLINE**

Plaintiff Luis Gaeta ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action was removed to this Court on November 12, 2020. (ECF No. 1.)

On August 2, 2021, the Court denied Plaintiff's motion for appointment of counsel and screened the complaint. (ECF No. 11.) Plaintiff was directed to either file a first amended complaint or notify the Court of his willingness to proceed only on the cognizable claim identified by the Court, within thirty days from the date of service of that order. (*Id.*)

Currently before the Court is Plaintiff's request for a continuance and renewed request for appointment of counsel, filed September 16, 2021. (ECF No. 12.) Defendants have not had an opportunity to file a response, but the Court finds a response unnecessary. The motion is deemed submitted. Local Rule 230(l).

1 In his motion, Plaintiff states that although the Court's screening order is postmarked  
2 August 2, 2021, it was not delivered to his person until August 25, 2021, all but exhausting his  
3 thirty-day deadline. (ECF No. 12.) Plaintiff also argues that he disagrees with the Court's denial  
4 of his prior motion for appointment of counsel, highlighting the difficulties faced as a result of the  
5 COVID-19 pandemic, including the resulting institutional shutdowns and lockdowns, mail holds,  
6 mailing times, and difficulties accessing the law library at his institution. (*Id.*)

7 As to Plaintiff's renewed request for appointment of counsel, the Court will not reiterate  
8 the discussion presented in the August 2, 2021 screening order. The Court does not find that the  
9 COVID-19 pandemic presents the required exceptional circumstances, as all incarcerated  
10 plaintiffs are experiencing the same hardships faced by Plaintiff in litigating their civil actions.

11 After review of the motion, however, the Court finds good cause to grant the requested  
12 extension of time for Plaintiff to file his first amended complaint or notify the Court of his  
13 willingness to proceed on the cognizable claim identified. Fed. R. Civ. P. 6(b). The Court finds  
14 that an extension of thirty (30) days is appropriate under the circumstances.

15 Accordingly, IT IS HEREBY ORDERED as follows:

- 16 1. Plaintiff's renewed motion to appoint counsel, (ECF No. 12), is DENIED, without  
17 prejudice;
- 18 2. Plaintiff's motion for extension of time, (ECF No. 12), is GRANTED;
- 19 3. The Clerk's Office shall send Plaintiff a complaint form;
- 20 4. Within **thirty (30) days** from the date of service of this order, Plaintiff must either:
  - 21 a. File a first amended complaint, limited to 25 pages, curing the deficiencies  
22 identified by the Court's August 2, 2021 screening order; or
  - 23 b. Notify the Court in writing that he does not wish to file a first amended  
24 complaint and he is willing to proceed only on his claims for unconstitutional  
25 conditions of confinement in violation of the Eighth Amendment and for  
26 negligence against Defendants Sherman and Milam; and

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